

Senate Bill No. 279

Passed the Senate September 8, 2005

Secretary of the Senate

Passed the Assembly September 6, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 18.5 (commencing with Section 2418) to Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

SB 279, Cedillo. Physicians and surgeons: locum tenens services.

Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California.

This bill would prohibit a locum tenens agency, defined as an agency that arranges for licensees to perform locum tenens services and meets other requirements, from employing a licensee to perform temporary professional medical services or from interfering with, or attempting to influence the clinical judgment of, such a licensee. The bill would provide a rebuttable presumption that the relationship between a licensee providing locum tenens services and a client or customer of the locum tenens agency shall be one of an independent contractor.

The people of the State of California do enact as follows:

SECTION 1. Article 18.5 (commencing with Section 2418) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 18.5. Locum Tenens Services

2418. (a) The Legislature hereby finds and declares all of the following:

(1) The State of California is facing a growing crisis in physician supply due, in part, to difficulties in recruiting and retaining physicians.

(2) This crisis is particularly harsh for facilities operated by the state and local governments due to the difficulties of funding full-time medical staff.

(3) Locum tenens physicians provide a critical source of medical services that virtually all hospitals in California use at one time or another every year.

(4) The great majority of California hospitals, and many medical groups and other providers, including many state-supported facilities, use locum tenens agencies either continuously or from time to time to help fill their medical staffing needs.

(5) Most locum tenens agencies are barred from employing physicians under the corporate practice doctrine (Article 18 (commencing with Section 2400)) and, thus, do not employ the physicians whose locum tenens services they arrange.

(b) Notwithstanding any other provision of law, a “locum tenens agency” shall not be deemed to be an employer, employment agency, employment counseling service, job listing service, nurse’s registry, temporary services employer, or leasing employer of a licensee.

(c) A locum tenens agency is an individual or entity that meets all of the following requirements:

(1) Contracts with clients or customers to identify licensees willing to perform locum tenens services and to arrange for the licensees to perform locum tenens services for the clients or customers on a temporary, nonpermanent basis .

(2) Arranges for the licensees to perform locum tenens services only to those clients and customers that are legally authorized to enter into independent contractor arrangements with licensees.

(3) Does not determine the rates of payment made to a licensee providing locum tenens services, or determine the hours of work by the licensee.

(4) Receives payment directly from its clients or customers for its services which, to the degree that the payment includes payment for the locum tenens services, remits the payment for the locum tenens services in full directly to the licensee.

(5) Charges fees that are reasonably related to the value of the services that the locum tenens agency provides its clients and customers, and that are in no way related to the quantity or value of locum tenens services provided by the licensee. This section does not prohibit a locum tenens agency from charging its clients and customers based on the number of days or hours that the

locum tenens services are provided or based on the particular speciality of the locum tenens services.

(d) A locum tenens agency shall not employ a licensee to perform locum tenens services, nor shall it interfere with or attempt to influence the clinical judgment of a licensee providing locum tenens services.

(e) It shall be a rebuttable presumption that the relationship between the client or customer of the locum tenens agency and the licensee providing locum tenens services is one of an independent contractor, pursuant to Section 656 of the Unemployment Insurance Code.

(f) For purposes of this section, “licensee” means a physician and surgeon licensed under this chapter.

(g) It is the intent of the Legislature that this section confirm and be declaratory of, rather than change, existing law.

(h) Nothing in this section shall apply to a category of health care professionals other than those specified.

Approved _____, 2005

Governor